

## JURIDICAL ANALYSIS OF CHILD ABUSE CRIMES COMMITTED BY CHILDREN

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### Abstract

This research aims to analyze criminal acts of sexual abuse against children from the perspective of criminal law and to analyze the application of criminal law to criminal acts of child molestation committed by children in Decision Number 8/Pid.SusAnak/2017/PN.Tgn. This research was carried out at the Tangerang District Court using primary data and secondary data. This research method uses a descriptive qualitative approach. The data collection techniques used were the library method and interview method, and then the data obtained was analyzed descriptively and qualitatively. The results of this research show that: (1) Acts of sexual abuse against children from the perspective of criminal law are qualified in Article 290-296 of the Criminal Code (KUHP) as *lex generalis* as well as Article 76E and Article 82 of Republic of Indonesia Law No. 35 of 2014 concerning Amendments to the Republic of Indonesia Law no. 23 of 2014 concerning Child Protection as *lex specialis*. (2) The application of material criminal law to perpetrators of criminal acts of child molestation in Case Number 8/Pid.SusAnak/2017/PN.Tgn is correct/correct. The Panel of Judges stated that the defendant MF had been legally and convincingly proven guilty of committing the crime of child molestation as regulated and punishable by crime in Article 82 Jo. Article 76E Republic of Indonesia Law no. 35 of 2014 concerning Amendments to Republic of Indonesia Law no. 23 of 2002 concerning Child Protection.

**Keywords:** Juridical Analysis, Crime, Child Abuse.

### INTRODUCTION

Children are a mandate and entrustment from Allah SWT. As for children, they are in line with human civilization which is developing day by day. Children as the younger generation are the successors to the ideals of the nation's struggle and human resources for development. Children are a form of long-term investment whose role cannot be ignored in realizing national and state life in all areas of life. The future of the nation and state in the future is in the hands of today's children.

The better the child's personality today, the better the life of the nation and state will be in the future. Protection of children according to Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection considers that the Indonesian state guarantees the welfare of every citizen, including child protection which is a human right. Every child has the right to survival, growth, and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia.

However, in reality in social life, the conditions and problems that accompany children's lives are very complex, both aspects of education, health, or unfair treatment seen from the legal aspect itself.

Cases such as sexual harassment, rape, molestation, violence against children, and child trafficking, of minors being used as commercial sex workers, are also often published in the media as if there is no day without cases involving children that occur in Indonesia. It is not only children who are victims of crime that are the main problem, but what is most worrying now is when children themselves become perpetrators of crimes. In culture and social life, crimes often occur that cannot be predicted and have even spread among children.

There are many phenomena reported by the mass media that children are perpetrators of criminal acts, one of which is the perpetrator of criminal acts of sexual immorality. Children as weak and helpless figures certainly do not understand what is good and bad to do. The behavior of minors related to sexual abuse is not enough to just be seen as ordinary delinquency.

The treatment of criminal acts of sexual abuse against children can be classified as immoral crimes which can damage the child's future. In Article 82 Paragraph (1) Jo. Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection regulates obscene acts against children

## **METHODS**

This research uses normative legal research, namely legal research that places law as a system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, agreements, and doctrines (teachings).

### **Data Collection Tools**

Tools for collecting data in this thesis research include primary, secondary, and tertiary legal materials. The primary legal materials in this thesis research are:

- a. The 1945 Constitution of the Republic of Indonesia.
- b. Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations.
- c. Law of the Republic of Indonesia Number 7 of 1947 concerning Controlling the Crime of Obscenity.

As for secondary legal materials in this thesis research, they are library materials or literature that are related to the research object, namely books written by scholars, legal experts, and scientific academics.

### **Data collection technique**

The data collection techniques used by the author in this research are:

- a. Interviews were carried out using direct observation in the field related to the material discussed and holding open interviews with related parties. Interviews in this qualitative research are conversations with a purpose that are preceded by several informal questions. Research interviews are more than just conversations and range from informal to formal.

- b. Documentation study is a method of collecting information by studying documents to obtain information related to the problem being studied and researched. By collecting data, reading, and reviewing court decision number 8/Pid.Sus-Anak/2017/PN.Tgn as well as several literature, articles, and statutory regulations related to the problem under study
- c. Observation is a data collection technique that is carried out systematically and deliberately through observing and recording the symptoms being investigated (Noor, 2015). That observation is the process of paying attention and observing carefully and systematically regarding the intended behavioral targets. The use of observation as a research method is because this observation technique relies on direct experience.

## DATA ANALYSIS

Data analysis according to Miles & Huberman (Sugiyono, 2016) in qualitative research is carried out during data collection and after completing data collection within a certain period. If the interview results that have been analyzed are deemed unsatisfactory, the researcher will continue asking questions until the data obtained is deemed credible and the data is saturated.

The steps in data analysis according to Miles and Huberman are as follows:

- a. Data reduction Reducing data means summarizing, selecting the main things, focusing on the important things, and looking for themes and patterns. In this way, the reduced data will provide a clearer picture and make it easier for researchers to collect subsequent data.
- b. Presentation of data Presenting data simply in the form of words can be done by forming charts, graphs, and the like. By presenting data, the data will be more organized and arranged in a relationship pattern, making it easier to understand.
- c. Conclusion or verification At this stage, initial conclusions which are still temporary will turn into definite and credible conclusions after checking by the researcher.

## RESULTS AND DISCUSSION

### Qualification of the crime of sexual abuse against children given criminal law

In criminal law, one of the principles which is a fundamental principle that must be maintained for the sake of legal certainty is known, namely the Principle of Legality. The principle of legality is the principle that determines that every criminal act must first be regulated by a legal rule or at least by a legal rule that already exists or is in effect before the person commits the act. Every person who commits a criminal act must be legally responsible for his actions. In other words, the principle of legality is a principle that determines that no act is prohibited and punishable by crime if it is not previously determined in legislation.

Moeljatno said that sexual immorality is any act that violates morals or is a heinous act related to sexual desire. The definition expressed by Moeljatno focuses more on acts carried out by people based on their sexual desires, which directly or indirectly constitute acts that violate morality and can be punished.

Obscene acts are a crime that violates morality as regulated in Articles 289 to 296 of the Criminal Code, where Article 289 states that: "Whoever, by force or threat of violence, forces someone to commit or allows an obscene act to be committed on him or herself, shall be punished for destroying civility with a maximum prison sentence of nine years.

Apart from obscene acts and sexual intercourse, there is also a criminal act that violates decency (decency), namely adultery.

The act of adultery is contained in Article 284 of the Criminal Code which states the following:

- a. Sentenced to imprisonment for nine months; a man who is married commits adultery and knows that Article 27 of the Civil Code applies to him; married women do
- b. Adultery prosecution is only carried out on the complaint of the husband or wife (who is embarrassed).

Adultery consists of the act of sexual intercourse between a married person and someone who is not his wife or husband, in which sexual intercourse is carried out voluntarily (consensual). If there is coercion, then the person being forced does not commit a crime he becomes the object of a crime.

Based on the discussion above, the author can conclude the differences between these criminal acts, namely as follows:

- a. Obscenity is any form of act that violates decency (decency) related to the genitals or other parts of the body that can stimulate sexual desire.
- b. Intercourse is a combination of male and female genitalia which is usually carried out to produce children, so the male genitalia must enter the female genitalia and the male genitalia produces sperm which can result in pregnancy.

The principle of legality, in law, is also known as the Lex principle. *Specialis Derogate Lex Generalis*, meaning that more specific rules override general rules. This is because the case that the author is researching is a case of obscenity where the criminal act of sexual immorality, apart from being regulated in the Criminal Code (KUHP), is also regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Based on the principle of "*lex specialis derogate lex generalis*" the legal rules for the crime of sexual abuse can be seen that the Criminal Code is "*lex generalis*" and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is "*lex specialis*" .

Because the case that the author is studying is a child's case, the legal rules used are more specific, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

## **Application of Criminal Law to the Crime of Child Abuse in Decision Number 8/Pid.SusAnak/2017/PN.Tgn**

Judges, when examining criminal cases, try to find and prove material truth based on the facts revealed in the trial and adhere strictly to the indictment formulated by the Public Prosecutor. Based on the description regarding the application of material criminal law to criminal acts of child molestation committed by children in decision Number: 8/Pid.Sus-Anak/2017/PN.Tgn,

### **Case Position**

The case of sexual abuse that the author researched occurred on Sunday, February 12 2017 at around 13.30 WITA at Kaccilolo, Kel. Malino, District. Tinggimoncong, Kab. Gowa or at least at certain times in 2017 or at least in a place that is still included in the jurisdiction of the Tangerang District Court, with a child defendant with the initials MF and a child victim with the initials NPA, the defendant's actions were carried out in the following manner :

After that, the perpetrator entered the room and then called the victim to come in by saying "Come on, come on," then the victim answered. I don't want to come in, let me stay here, but the perpetrator forced the victim by saying, "Come on, come in, you're tired, I want to sleep. So the victim went into the room and immediately watched TV while lying on the bed with the perpetrator. Not long after.

### **Public Prosecutor's Indictment**

The basis for making an indictment must be guided by the investigation report which has been qualified by the investigator for the crime. When making an indictment, what must be taken into account is the results of the examination and the article under which the criminal act was violated. The Public Prosecutor who carries out prosecution duties makes an indictment based on the minutes provided by the investigator to proceed to the examination stage at the court hearing. In case Number 8/Pid.Sus-Anak/2017/PN. This year, the Public Prosecutor used a single indictment. A single indictment charges only one criminal offense

### **Public Prosecutor's Demands**

The Public Prosecutor's Request is the Public Prosecutor's request to the Panel of Judges when they want to try a case, as follows:

- a. Child perpetrators who have been legally and convincingly proven guilty of committing criminal acts of sexual immorality as regulated and punishable by crime in Article 82 Jo. Article 76E Republic of Indonesia Law no. 35 of 2014 concerning Amendments to the Republic of Indonesia Law no. 23 of 2002 concerning Child Protection as a single indictment;
- b. Sentencing the child perpetrator to imprisonment for 2 (two) years and 6 (six) months at LPKA (Special Child Development Institution) Class II B in Maros, reduced in full while the child is in detention with an order that the child remain in detention and work training during 6 (six) months at LPKA (Special Children's Development Institute) Class II B in Maros;

- c. Evidence includes: (1). 1 (one) piece of pink t-shirt. (2). 1 (one) checkered long-sleeved shirt. (3). 1 (one) pair of black and red striped training pants. Swept for destruction (1). The order that the child remains detained; (2). Burden the child to pay court fees of IDR 2,000.00 (two thousand rupiah).

### **Judge's Legal Considerations in Making Decisions**

The judge's legal considerations in handing down a decision on the criminal act of child molestation committed by a child in Decision Number 8/Pid.Sus-Anak/2017/PN.Tgn, based on several considerations, the judge examined and handed down the decision based on the indictment.

The legal facts in the trial obtained by the Panel of Judges at the Tangerang District Court who examined and tried the defendant in this case after listening to the statements of witnesses, the defendant's statements, evidence, and evidence at trial were as follows:

- a. That was true on Sunday, February 12, 2017, at around 13.30 WITA at the Children's House located in Kaccilolo, Kel. Malino, District. Tinggimoncong, Kab. Gowa, it started when the Child and the Victim Witness promised to meet, then the Child picked up the Victim Witness near the prayer room which was near the Victim Witness' house, and then the Child invited the Victim Witness to his house. Arriving at the Child's house, the Victim Witness and the Child chatted in the living room for approximately 30 (thirty) minutes together with the Child's grandmother and aunt. The Child invited the Victim Witness into the room but the Victim Witness didn't want to come in so I would stay here.
- b. At around 19.00 the Child and the Victim Witness left the Child's house to go for a walk until 23.00, then because the Victim Witness was afraid to go home, the Victim Witness returned to the Child's house until 05.00. After that, the victim witness and child continued their journey to Tangerang and finally arrived at the Limbung area at the child's aunt's house. Whereas the Victim Witness and Child had only known each other for about 2 (2) months via Facebook (FB); the Child and Victim Witness committed obscene acts 4 (four) times in different places. The Child and the Victim Witness committed the first obscene act around January 2017 at the house of Anak's friend named Ria and the last time was on February 12 2017 at Anak's house

Whereas the way the Child carried out the obscene act was the same, namely by the Child hugging the Child while kissing the Victim Witness's cheek and lips, then the Child touching the victim's breasts and vagina, after that the Child inserted the Child's middle finger into the Victim Witness's vagina; As a result of this incident, the victim witness experienced vaginal pain, trauma, fear and shame.

## Judge's Decision

In case Number 8/Pid.Sus-Anak/2017/PN. The Panel of Judges decided as follows:

- a. Declare that the child mentioned above has been legally and convincingly proven guilty of committing the crime of "deliberately inducing the child to commit an obscene act" as stated in the sole indictment of the Public Prosecutor;
- b. Sentencing children with imprisonment for 1 (one) year and 8 (eight) months and job training at (Special Children's Development Institute) Class II B in Maros for 6 (six) months;
- c. Determining that the period of arrest and detention that has been served by the child is deducted entirely from the sentence imposed;
- d. Determining that the child remains detained;
- e. Determine evidence in the form of: (a). 1 (one) piece of pink t-shirt. (b). 1 (one) checkered long-sleeved shirt. (c). 1 (one) pair of black and red striped training pants. Returned to the rightful person; (d). Charge the child to pay the court costs in the specified amount.

Based on the facts revealed at the trial and by the position of the case accompanied by valid evidence such as statements from witnesses, statements from the defendant, documentary evidence namely Visum Et Repertum as well as clues obtained during the trial, if everything is connected, the facts are found. Facts that show that all the elements of the Public Prosecutor's indictment have been fulfilled. The elements of the indictment are as follows: Each person; Deliberately; Carrying out violence or threats of violence, coercion, deception, a series of lies or persuasion; Child; to commit or allow to be committed obscene acts.

## Elements of Violence or Threats of Force, Deception, Persuading Lies

### Alternative Elements

This element is alternative, that is, if one of the element choices has been fulfilled then it is considered to have fulfilled the formulation of this element. What is meant by the element "committing violence" means using physical force, while "threat of violence" means there is an effort that causes mental pressure to such an extent. According to the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 55.K/Pid/1994 which states that violence or threats of coercion do not have to be interpreted only as external (physical) violence but must be interpreted more broadly, which also includes psychological coercion/pressure. ) in such a way that the victim is no longer free to comply with his will and ultimately just obeys the coercer's wishes. Meanwhile, what is meant by deception is committing dishonest actions or words (lies, fakes, etc.) with the intention of misleading, outsmarting, or seeking profit.

### Child Element

Based on the statements of the Witnesses, the statements of the Defendant, connected with the evidence, Visum Et Repertum which correspond to each other, the facts of the trial were found to be that the Child invited the Victim Witness into the room then the Child invited the Victim Witness to have a relationship like a husband and wife but the Victim Witness then refused.

The child hugged the victim witness while kissing the witness's cheek and lips The valid evidence as regulated in Article 184 Paragraph (1) of the Criminal Procedure Code consists of the following:

- a. Witness statements;
- b. Expert testimony;
- c. Letter;
- d. Instruction;
- e. Defendant's statement.

In this case, the legal evidence to be used as material for consideration by the judge is the witness statement, the defendant's statement, documentary evidence, namely the Visum Et Repertum, and instructions. Apart from that, it is also connected to the evidence presented in the trial. If there is a match between each piece of evidence and the evidence, legal facts will be obtained which will be the basis for the judge to obtain confidence. This can be seen from the defendant's intention to try to insert his penis into the victim's vagina, but this did not materialize because the victim pushed the defendant's body and said it hurt. The defendant's actions were not only carried out once but were carried out 4 (four) times. This can be seen from one of the legal facts obtained at the trial which states that the Child and the Victim Witness committed obscene acts 4 (four) times in different places. According to the author, this should also be taken into consideration by the judge to increase the defendant's sentence. Then what is damaged is not only the victim's mental state, but it can also threaten the victim's future. Apart from that, as a result of this incident, the victim's family also felt embarrassed because this incident had become a disgrace to the family. Based on the description and results of the interview above, the author concludes that the judge's legal considerations in deciding this case still contain several shortcomings as the author described above, the crime victim and society in general, not only from the perspective of the perpetrator of the crime.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusion**

Based on the results of the research and discussion described above, the author draws the following conclusions:

- a. The qualification of criminal acts of sexual abuse against children from the perspective of criminal law can be qualified in Article 290-296 of the Criminal Code (KUHP) as *lex generalis* as well as Article 76E and Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2014 concerning Child Protection as *lex specialis*. Since the case that the author is studying is a child's case, the Child Protection Law is more appropriate, namely Article 76E and Article 82 which fulfill the following elements: (a). Each person; (2). Deliberately carrying out violence or threats of violence, coercing, deception, a series of lies, or persuading a child; (3). Committing or allowing obscene acts to be committed.



- b. If these elements are met, a person will be threatened with imprisonment for a minimum of 5 (five) years a maximum of 15 (fifteen) years, and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). If the perpetrator is a child, 2 (two) sanctions can be imposed, namely criminal sanctions and action sanctions as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Apart from that, the prison sentence that can be imposed on a child is a maximum of 1/2 (one-half) of the maximum penalty of imprisonment for an adult and if a child who commits the crime is threatened with imprisonment and a fine, the fine is replaced with job training.
- c. Application of material criminal law by the Panel of Judges at the Tangerang District Court in case Number 8/Pid.SusAnak/2017/PN.Tgn which stated that the defendant MF had been legally and convincingly proven guilty of committing the crime of sexual abuse against children with NPA victims as regulated in Article 82 Jo. Article 76E Republic of Indonesia Law no. 35 of 2014 concerning Amendments to the Republic of Indonesia Law no. 23 of 2002 concerning Child Protection is correct.

### **Suggestion**

Based on the results of the discussion and conclusions, several recommendations can be given in the form of suggestions, namely as follows:

- a. Judges must be more careful and observant in considering things that aggravate or mitigate the defendant and the criminal sanctions he or she imposes. However, judges have a big role in reducing or increasing the number of crimes that occur in society. This means that the judge must be able to provide a deterrent effect for the defendant so that he does not re-offend and a deterrent effect for the public so that they are afraid of committing a crime.
- b. Parents, including children, should be alert to the possibility of criminal acts occurring, especially sexual abuse against children because criminal acts of sexual abuse can occur to anyone, anytime and anywhere regardless of their environment, economic and educational background.
- c. For law enforcement officials and the community to provide active and comprehensive legal education, especially to minors regarding the impact of committing criminal acts which result in harm to the child himself.

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